

**EMORD & ASSOCIATES, P.C.**

1050 SEVENTEENTH STREET, N.W.

SUITE 600

WASHINGTON, D.C. 20036

TELEPHONE: (202) 466-6937

TELECOPIER: (202) 466-6938

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Food and Drug Administration

5630 Fishers Lane, Room 1061

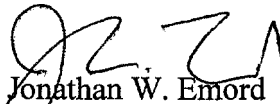
Rockville, MD 20852

Re: 91N-0098

Dear Sir or Madam:

Please find enclosed the Comments of Dr. Julian Whitaker, Imagenetix, Inc., Pure Encapsulations, Inc., Weider Nutrition International, Inc., XCEL Medical Pharmacy LTD, the American Preventive Medical Association, and Durk Pearson and Sandy Shaw (Commenters). The Commenters are filing the attached comments in response to the September 8, 1999 FDA request for scientific data and information for consideration in evaluating following health claim: "Consumption of fiber may reduce the risk of colorectal cancer."

Sincerely,



Jonathan W. Emord  
Eleanor A. Kolton

Enclosure

91N-0098

C119

Before the  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
FOOD AND DRUG ADMINISTRATION

In re: Food Labeling; Health Claims and )	
Label Statements; Request for )	Docket No. 91N-0098
Scientific Data and Information )	(Fiber and Colorectal Cancer)
)	

**COMMENTS OF**  
**JULIAN M. WHITAKER, M.D.;**  
**IMAGENETIX, INC.;**  
**MYCOLOGY RESEARCH LABS, LTD;**  
**PURE ENCAPSULATIONS, INC.;**  
**WEIDER NUTRITION INTERNATIONAL, INC.;**  
**XCEL MEDICAL PHARMACY LTD;**  
**THE AMERICAN PREVENTIVE MEDICAL ASSOCIATION; AND**  
**DURK PEARSON AND SANDY SHAW.**

Julian M. Whitaker, M.D.; Imagenetix, Inc.; Mycology Research Labs, Ltd.; Pure Encapsulations, Inc.; Weider Nutrition International, Inc.; XCEL Medical Pharmacy, Ltd.; the American Preventive Medical Association; and Durk Pearson and Sandy Shaw (collectively, "Joint Commenters"), by counsel and in response to the notice seeking scientific data and information ("Notice") published in the Federal Register, 64 Fed. Reg. 48841-48842 (September 8, 1999), hereby submit these comments.

**I. BACKGROUND OF COMMENTERS**

*Julian M. Whitaker*, M.D. Julian M. Whitaker, M.D. is a physician licensed to practice medicine in the states of California and Washington. He graduated from Dartmouth College in 1966 with a B.S. degree and from Emory University in 1970 with an M.D. degree. He received additional training in surgery as a resident at the University of California Medical School. From 1975 to 1976 he worked as a physician at the



Pritikin Institute in California. Since that time he has been the Clinical Director of the Whitaker Wellness Institute in Newport Beach, California. He is the author of five books: *Reversing Heart Disease* (1985), *Reversing Diabetes* (1987), *Reversing Health Risk* (1989), *Natural Healing* (1994), and *What Your Doctor Won 't Tell You About Bypass* (1995). Since August of 1991 he has been the editor of *Health & Healing*, currently the nation's largest single editor health newsletter. In 1998, *Health & Healing* had over 500,000 subscribers. He receives royalties from the distribution and sale of several dietary supplements based on formulas he develops and licenses. Among the supplements which Dr. Whitaker has formulated (and from which he receives or will receive royalty payments) is a lignin fiber based product. He wants to place the proposed health claim on the labels and in the labeling of his fiber dietary supplement and, but for FDA's extant bar on labeling use of the claim, he would do so. Accordingly, he seeks FDA approval of the claim.

***Durk Pearson and Sandy Shaw.*** Pearson and Shaw are scientists residing in Nevada. They design dietary supplement formulations and license them to manufacturing and retailing companies. They are authors of four books on aging and age-related diseases, including the #1 , million plus copy best seller *Life Extension: A Practical Scientific Approach* (1982). They have also published three other health books, two of which were best sellers: *The Life Extension Companion* (1984); *The Life Extension Weight Loss Program* (1986); and *Freedom of Informed Choice-FDA Versus Nutrient Supplements* (1993). Durk Pearson and Sandy Shaw were plaintiffs in the Pearson v. Shalala case. The agency identifies this proceeding as one to aid it in implementing Pearson's mandate. Pearson and Shaw license dietary supplements that

contain fiber. Pearson and Shaw wish to communicate the nutrient/disease relationship that is the subject of these comments on their fiber dietary supplement labels and in their labeling.

***American Preventive Medical Association.*** The American Preventive Medical Association (APMA) is a non-profit organization located in Virginia. APMA was founded in October of 1992 and is dedicated to ensuring consumer access to preventive therapies and the rights of health care providers to offer those therapies. APMA was a plaintiff in the Pearson v. Shalala case. The agency identifies this proceeding as one to aid it in implementing Pearson's mandate. Several APMA physicians sell dietary supplements that contain fiber. APMA and its practitioner members and their hundreds of thousands of patients would benefit from approval of the health claim that is the subject of this proceeding because it would enable them to communicate and receive non-misleading health information on labels and in labeling concerning the effects of fiber on reducing the risk of colorectal cancer. APMA and its member physicians, therefore seek agency approval of the claim.

***Imagenetix, Inc.*** Imagenetix, Inc. (Imagenetix) is a California corporation engaged in the business of manufacturing, distributing, and, selling pharmaceutical grade dietary supplements for human consumption. One of the dietary supplements that Imagenetix plans to manufacture and sell contains fiber. Imagenetix wants to place the proposed health claim on the labels and in the labeling of that fiber supplement and, accordingly, Imagenetix seeks approval of the health claim that is the subject of this proceeding.

***Mycology Research Labs LTD.*** Mycology Research Labs LTD (Mycology) is a corporation organized in Great Britain engaged in the business of manufacturing, distributing, and selling multiple pharmaceutical grade dietary supplements for human consumption in the United States. Five of the dietary supplements manufactured and sold by Mycology contain fiber. Mycology wants to place the proposed health claim on the labels and in the labeling of those fiber supplements and, accordingly, Mycology seeks approval of the health claim.

***Pure Encapsulations, Inc.*** Pure Encapsulations, Inc. (Pure) is a Massachusetts corporation engaged in the business of manufacturing, distributing, and selling over 250 pharmaceutical grade dietary supplements for human and companion animal consumption. One of the dietary supplements manufactured and sold by Pure for human consumption contains fiber. Pure would like to place the proposed health claim that is the subject of this proceeding on the label and in the labeling of that fiber dietary supplement.

***Weider Nutrition International, Inc.*** Weider Nutrition International, Inc. (Weider) is a Utah corporation engaged in the business of manufacturing, distributing, and selling over 2,000 pharmaceutical grade dietary supplements for human and companion animal consumption. Weider has been a health, fitness and sports nutrition leader for nearly ~~fifty~~ years since its founding in 1939. Weider plans to manufacture and sell at least four dietary supplements that contain fiber. Weider would like to place the proposed health claim that is the subject of this proceeding on the labels and in the labeling of those fiber products.

***XCEL Medical Pharmacy, Ltd. d/b/a XCEL Health Care.*** XCEL Medical Pharmacy, Ltd. d/b/a XCEL Health Care (XCEL) is a California corporation engaged in

the business of manufacturing, distributing, and selling pharmaceutical grade dietary supplements for human consumption. One of the dietary supplements XCEL intends to manufacture and sell XCEL contains wheat and vegetable fiber. XCEL would like to use the proposed health claim that is the subject of this proceeding on the labels and in the labeling of those fiber products.

## **II. SUMMARY OF THE NOTICE**

The Department of Health and Human Services (HHS), Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) has published a Notice in the September 8, 1999 Federal Register, 64 Fed. Reg. 48841-48842, requesting scientific data, research study results, and other related information concerning four substance-disease relationships. The agency's Notice is its first step toward implementation of Pearson v. Shalala, 164 F. 3d 650 (D.C. Cir. 1999) *reh 'g denied en banc*, No. 98-5043, 1999 U.S. App. LEXIS 5954 (Apr. 2, 1999). In Pearson, the U.S. Court of Appeals for the D.C. Circuit held four FDA sub-regulations (prohibiting each of the four substance-disease relationships) invalid under the First Amendment. (21 C.F.R. §§ 101.71(a), (c), (e); 101.79 (c)(2)(i)(G)). Pearson, 164 F. 3d 658. One of the four subregulations is the subject of this comment. That regulation, 21 C.F.R. § 101.71 (a), prohibits the following claim: "consumption of fiber may reduce the risk of colorectal cancer." The FDA Notice states that the agency will determine if an "appropriate scientific basis exists to support the issuance of a proposed rule to authorize a health claim for the relationship between antioxidant vitamins and cancer based on the

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<sup>1</sup> 21 C.F.R. § 101.71(c) in pertinent part reads: "Health claims not authorized for foods in conventional food form or for dietary supplements of vitamins, minerals, herbs, or other similar substances: Dietary Fiber and cancer."

data and information it receives.” 64 Fed. Reg. 48841. FDA requests that interested parties submit scientific data and information published between 1992 and the present concerning the relationship.\*

### **III. COMMENT**

#### **A. FDA MUST DEFINE ITS “SIGNIFICANT SCIENTIFIC AGREEMENT STANDARD” AS A CONDITION PRECEDENT TO EVALUATION OF THE NUTRIENT-DISEASE RELATIONSHIP**

The Pearson court held FDA’s refusal to define “significant scientific agreement” in 21 CFR § 101.14 a violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). In particular, the court ordered the agency to make explicit the principles which guide agency action so that the regulated class could discern what would be required of it to satisfy the standard. Pearson, 164 F. 3d 660. Because any FDA action on a claim would violate the APA unless the scientific agreement standard is adequately defined, FDA may not act on the scientific evidence it receives until after its definition is promulgated. Moreover, once an adequate definition is published but before a decision is reached on the proposed claim, the agency must reopen this proceeding to allow additional comments to be filed addressed to the requirements of the defined standard.<sup>3</sup>

#### **B. SUBSTANTIAL SCIENTIFIC EVIDENCE EXISTS TO SUPPORT THE NUTRIENT-DISEASE RELATIONSHIP**

Cancer is the second leading cause of death in America with 544,278 deaths in 1996. CDC, [www.cdc.gov/nchs/fastats](http://www.cdc.gov/nchs/fastats). Colorectal cancer is the third most common cancer in men and women with an estimated 130,000 new cases diagnosed each year.

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<sup>2</sup> In correspondence with CFSAN’s Director, counsel to the Pearson plaintiffs has been assured that the agency will reopen the Notice comment period for an additional 75 days after it publishes its significant scientific agreement guidance defining a standard for review of health claim petitions. See Attachment 7.

American Cancer Society, Cancer Facts and Figures, Atlanta, GA : Amer Canc Soc, 1996. DHHS considers poor nutritional status one of the many factors that places individuals, especially minorities and poor people, at risk. "Evidence suggests that diet and nutrition may be related to 30 to 40 percent of cancer deaths." DHHS, "The Initiative to Eliminate Racial and Ethnic Disparities in Health," <http://raceandhealth.hhs.gov> (1998). However, the *Third Report on Nutrition Monitoring in the United States*, commissioned by the USDA and DHHS, indicates that "less than one third of American adults meet the recommendation to consume five or more servings of fruits and vegetables per day." The report indicates that those families and individuals living near or below the poverty level are most likely to have food insufficiencies. USDA and DHHS, Third Report on Nutrition Monitoring in the United States: Executive Summary (1995).

The *Pearson* plaintiffs and other commenters in the rulemakings below presented FDA with a substantial quantity of scientific evidence showing a direct connection between consumption of fiber and a reduction in colorectal cancer risk. The research submitted earlier is well-designed and appears in the most respected peer-reviewed scientific journals. It has been corroborated in many studies, some public and some private, including the following:

- Vargas PA, Alberts DS, "Colon Cancer: The Quest for Prevention," *Oncology* 7:33-40, 1993 (Adequate intakes of fiber, calcium and other micronutrients are thought to act as inhibitors of colon carcinogenesis; most animal and epidemiological studies show a protective effect of dietary fiber on colon carcinogenesis);
- Steinmetz KA, Potter JD, "Vegetables, fruit and cancer: I. Epidemiology," *Cancer Causes and Control* 2(5): 325-357, 1991; Steinmetz KA, Potter JD, "Vegetables, fruit and cancer: II. Mechanisms. Epidemiology," *Cancer Causes and Control* 2(6): 427-442,

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<sup>3</sup> The agency has agreed to define the standard before 2000 and reopen this proceeding to accept additional comments after the standard is defined. See Attachment 6.

1991; Jacobs LR, "Fiber and colon cancer," *Gastroenterology Clinics of N. Amer.* 17 (4): 747-760, 1988 (Ingestion of fiber could slow the progression of carcinogenesis in the large bowel by a number of mechanisms);

\*Howe GR, Bentino E, Castelleto R, et. al., "Dietary intake of fiber and decreased risk of cancers of the colon and rectum: evidence from the combined analysis of 13 case-control studies," *J of the Nat'l cancer Inst.*, 84(24): 1887-1896, 1992 (A meta-analysis of 13 case control studies from 9 countries concludes that intake of fiber-rich foods is inversely related to cancers of both colon and rectum).

•Reddy B. Engle A, Katsifis S, et. al.: Biochemical epidemiology of colon cancer: effect of types of dietary fiber on fecal mutagens, acid, and neutral sterols in healthy subjects. *Cancer Research*, 49 (16): 4629-4635 (confirms the protective effects of dietary fiber using a supplement of 10 g/day of wheat bran, cellulose and oat bran).

The foregoing studies confirm results of other studies in the record in Docket 91N-098 and in the Pearson record: Potter (1992, 1993) and Jacobs (1988, 1987, 1986)<sup>4</sup>.

FDA has already accepted the validity of scientific evidence for a fiber/cancer risk reduction claim for foods in common form. 21 C.F.R. § 101.76. The agency refused to approve the fiber-cancer claim for supplements because "a supplement would contain only fiber, and there is no evidence that any specific fiber itself caused the effects that were seen in studies involving fiber-rich [foods]." 58 Fed. Reg. 53,296, 53,298 (1993). The scientific evidence, however, did, and does, support, the unique cancer protection role of fiber (see Attachments 1, 3, 4, and 5). Results of recent human studies conducted by Macrae (1999); Jansen (1999); Negri (1998); Caygill (1998); and Le Marchand (1997) all indicate that fiber has a chemoprotective effect on colorectal tissue, independent of the other components of plants. The European Cancer Prevention (ECP) consensus meeting on fiber and colorectal cancer concluded that a "diet rich in high fiber cereal is associated with a reduced risk of colorectal cancer" ([ECP Consensus], Eur J Cancer Prevention,

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<sup>4</sup>Abbreviated references in this comment correspond with those presented in full in the bibliographical listing. See Attachment 1.

(1998). The ECP reviewed the results of 19 studies of cereal fiber. 16 of the 19 showed an inverse association between that fiber and colon cancer. The ECP findings confirm the earlier World Health Organization's consensus statement on the role of nutrition in colorectal cancer which cites the chemoprotective effect of fiber (Sheppach, 1999). Hill (1998) reviewed 19 studies that examined the influence of cereal fiber on the incidence of colorectal cancer. 16 of those studies showed an inverse relationship between cereal fiber and colon cancer rates while only 3 showed no relationship. Hill concludes that there is "a strong body of evidence that cereals are protective against colorectal carcinogenesis, and that is likely to be most pronounced in the high-fiber cereals, particularly wheat" and "although the strength of the protection may be disputed, there is no doubt about the protection afforded by cereal fiber."

The Department of HHS and the Department of Agriculture have linked fiber with cancer risk reduction in their own publication widely disseminated to the American public, the Dietary Guidelines for America, 4<sup>th</sup> ed., 1995. HHS and USDA recommend eating a variety of fiber containing plant foods, which "may reduce the risk for heart disease and some cancers." Dietary Guidelines for America, p.22-23. Other agencies concur:

- CDC: "A diet high in fiber, high in antioxidants, and low in fat may play an important role in preventing the development of atherosclerosis, coronary heart disease, and some cancers." *Health in Later Years*, Center for Disease Control, Office of Women's Health. 1996. <http://www.cdc.gov/od/owh/whily.htm>.
- NCI: "most animal and epidemiologic studies show a protective effect of dietary fiber on colon carcinogenesis . . . Other studies have corroborated the effects of dietary fiber.. . Diet appears to be associated with colorectal cancer risk. Among populations that consume a diet high in fat, calories, and alcohol and low in calcium and dietary fiber, colorectal cancer is more likely to develop than in populations that consume a low-fat, high fiber diet." National Cancer Institute PDQ Screening/Prevention

Summary for Health Professionals Prevention of Colorectal Cancer, January 1998, Pages 1-3.

- NCI: Epidemiologic, experimental (animal), and clinical investigations suggest that diets high in total fat, protein, and alcohol and low in calcium and dietary fiber, particularly that derived from vegetables, are associated with an increased incidence of colorectal cancer. Levels of evidence for preceding statement: 3b (Evidence obtained from cohort or case control analytic studies, preferably from more than one center or research group with cancer incidence end point) and 5b (Ecologic studies (descriptive) with cancer incidence end point). . .The dietary components suggested as colon cancer promoters are excess fat and excess calories. Adequate intakes of fiber, calcium and other micronutrients are thought to act as inhibitors of colon carcinogenesis.<sup>5</sup> . . .Most animal and epidemiological studies show a protective effect of dietary fiber on colon carcinogenesis.<sup>6</sup> The term fiber is used to describe a complex mixture of compounds including insoluble fiber (typified by wheat bran and cellulose) and soluble fiber (usually dried beans). Ingestion of fiber could modify carcinogenesis in the large bowel by a number of mechanisms.<sup>7</sup> A recent meta-analysis of 13 case control studies from 9 countries concluded that intake of fiber-rich foods is inversely related to cancers of both colon and rectum.<sup>8</sup> . . .Overall, these observations suggest a protective role against colorectal cancer for dietary fiber, particularly fiber derived from vegetables. National Cancer Institute PDQ Screening/Prevention Summary for Health Professionals Prevention of Colorectal Cancer, May 1998, pp.1-14.

Charles B. Simone, M. MS., M.D., an NCI trained oncologist and immunologist and the author of more than 40 peer-reviewed scientific journal articles on nutrition and cancer, has investigated the field of nutrition and cancer for more than 32 years. (Simone curriculum vita is attached as Attachment 2). Based on his investigations, clinical experience, and an extensive review of the scientific literature (hundreds of studies involving tens of thousands of subjects since 1980), Dr. Simone concludes that a daily intake of 25 to 35 grams of dietary fiber will reduce the risk of colorectal cancer and that

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<sup>5</sup> Vargas PA, Alberts DS, "Colon Cancer: The Quest for Prevention," Oncology 7:33-40, 1993.

<sup>6</sup> Id.

<sup>7</sup> Steinmetz KA, Potter JD, "Vegetables, fruit and cancer: I. epidemiology. Cancer Causes and Control 2(5): 325-357, 1991. Steinmetz KA, Potter JD, "Vegetables, fruit and cancer: II. Mechanisms. Cancer Causes and Control 2(6): 427-442, 1991. Jacobs LR, "Fiber and colon cancer. Gastroenterology Clinics of N. Amer. 17 (4): 747-760, 1988.

<sup>8</sup> Howe GR, Bentino E, Castelleto R, et. al., "Dietary intake of fiber and decreased risk of cancers of the colon and rectum: evidence from the combined analysis of 13 case-control studies." J of the Nat'l Cancer Inst., 84(24): 1887-1896, 1992.

a dietary supplement must be used by most people to obtain that protective amount of fiber. Report of Charles B. Simone, M.D., Nicole L. Simone, and Charles B. Simone, II ("Simone Report") at 2 and 5, Attachment 3. Moreover, thousands of *in vitro* and animal studies have demonstrated that supplemental fiber can decrease the risk of colorectal cancer. Simone Report at 2.

Fiber is a complex carbohydrate consisting of a polysaccharide and a lignin substance that provides the structure of a plant cell. Simone Report at 1; Sheppach, 1999; Hill, 1998. There are four general ways in which it is possible to obtain dietary fiber: (1) whole foods high in fiber; (2) a high fiber fraction which can be obtained from foodstuff in the same form (structure and composition) in which it is present in food, e.g. wheat bran; (3) concentrated fiber which has been altered in the course of extraction and purification such as cellulose and pectin; and (4) fiber fortified foods. Kritchevsky, 1997. Fiber may be included in the diet in each of those forms, but studies indicate that fiber from vegetables and wheat provide the strongest correlation with colorectal cancer risk reduction. Earnest, et al., 1999; Bingham, 1990; Macrae, 1999; Simone Report a 4, citing the Food, Nutrition and the Prevention of Cancer: A Global Perspective, ECP Consensus, 1998; Hill (1998); and Garay and Engstrom (1999) (citing Trock, 1990 and Howe, 1992)).

Jansen, et al. (1999) conducted a study of the relationship of fiber, compared to other plant nutrients, with colorectal cancer mortality in seven countries. The results of that cross-cultural study of 12,763 men, 40 to 59 years old, indicated that the fiber from whole grains, independent of whole plant foods and related sub-groups, was the relevant factor in reducing colorectal cancer risk. Furthermore, the results indicated that an

increase of 10 grams of dietary fiber per day reduced 25-year colorectal cancer risk by at least 33%. See also Position of the American Dietetic Association, 1997.

More than 40 percent of Americans will develop cancer and the great majority will die from it, but colorectal cancer is largely preventable with less than 5% being directly linked to genetic factors. (Simone Report at 5, U.S. House of Representatives Resolution H. Con. 133, Attachment 6. "Less than one third of American adults meet the recommendation to consume five or more servings of fruits and vegetables per day," and families and individuals living near or below the poverty level are most likely to have food insufficiencies.<sup>9</sup> The typical daily American diet includes only 8 to 15 grams of fiber. An adult would need to increase fiber consumption by three to five times to enjoy the chemoprevention effects fiber offers. Vegetable and whole grain fiber supplementation is a safe and effective way to aid Americans in achieving that dietary goal. Simone Report at 5. The evidence is overwhelming that "the consumption of fiber may reduce the risk of colorectal cancer." Dr. Simone concludes that the evidence is strong enough to state that fiber supplementation can, rather than may, reduce the risk of colorectal cancer. Simone Report at 5.

**C. FDA MUST CONSIDER USE OF DISCLOSURE% AND DISCLAIMERS IF THE SCIENTIFIC EVIDENCE SUPPORTING THE NUTRIENT-DISEASE RELATIONSHIP DOES NOT MEET A DEFINED SIGNIFICANT SCIENTIFIC AGREEMENT STANDARD**

If after evaluation of the scientific data and information under a defined standard, FDA determines that the evidence relationship does not satisfy its definition of "significant scientific agreement," FDA is constitutionally obligated by the First Amendment to consider approving the health claim with appropriate disclaimers.

Pearson, 164 F. 3d 658. See *also* Western States Medical Center et al. v. Shalala et al., Case No. CV-S-98-01650 (U.S.D.C. Nevada, Sept. 16, 1999). In doing so, FDA must first determine if the claim is inherently misleading or only potentially misleading. An inherently misleading claim conveys no truthful information. See *generally* Friedman v. Rogers, 440 U.S. 1, 99 S. Ct. 887 (1979), and Pearson analysis of Friedman, Pearson, 164 F. 3d 658.

Any concerns FDA may retain about potentially misleading information contained in the proposed claim must be addressed with corrective disclaimers even if the agency deems the claim not sufficiently backed by scientific evidence. Pearson, 164 F. 3d 658. The Pearson court held that concerns about the effect of potentially misleading information on consumers must be “accommodated by adding a prominent disclaimer to the label.” Pearson, 164 F. 3d 658.

The Commenters believe that the scientific evidence submitted by the Plaintiffs in Pearson v. Shalala coupled with the information submitted as part of these comments demonstrates a significant scientific agreement (within the intended meaning of Congress” ) that “consumption of fiber may reduce the risk of colorectal cancer.” If FDA finds the proposed claim not to satisfy a defined “significant scientific agreement” standard, the agency should, consistent with Pearson, authorize the claim with such

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<sup>9</sup> USDA and DHHS, Third Report on Nutrition Monitoring in the United States: Executive Summary (1995).

<sup>10</sup> Congress faulted FDA for failing to implement the standard as Congress intended. See Senate Report 103-410 at 23, 24, and 34 of the Committee on Labor and Human Resources on the Dietary Supplement Health and Education Act of 1994 (DSHEA): “[FDA’s] implementation of the health claims standard is hindering, rather than fostering, the dissemination of truthful and nonmisleading information about the nutrient/disease relationship.” Congress defined the term “significant scientific agreement” to mean “a significant segment of scientists having relevant expertise agree . . . that consumers are reasonably likely to obtain the claimed health benefit. . . . [T]he scientific evidence supporting a claim should not be held to the same standard used in evaluating new drug applications.”

disclaimer or disclaimers as may be reasonably necessary to avoid a potentially misleading connotation.

The First Amendment commercial speech doctrine compels FDA not to suppress potentially misleading speech but to correct it with disclaimers and let the public judge the comparative merit of the claim. See In re R. M. J., 455 U.S. 191, 203, 102 S. Ct. 929, (1982); see also Ibanez v. Florida Dep't of Business and Prof'l Regulation, 512 U.S. 136, 144-46, 114 S. Ct. 2084 (1994); Peel v. Attorney Registration and Disciplinary Comm'n of Illinois, 496 U.S. 91, 99-111, 110 S. Ct. 2281 (1990).

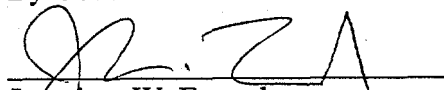
#### I v. **CONCLUSION**

Consistent with the decision in Pearson v. Shalala, 164 F.3d 650, (D.C. Cir. 1999), the Joint Commenters respectfully request that prior to its action on the proposed claim the agency define "significant scientific agreement" in 21 CFR § 10.1.14 by articulating clearly the principles that guide the agency in reaching its decision such that the Joint Commenters can perceive the degree, quality, quantity, and nature of evidence FDA expects to satisfy its standard. The Joint Commenters believe that the scientific evidence overwhelmingly supports the association between fiber and colorectal cancer risk reduction and satisfies the congressionally intended definition of significant scientific agreement. In addition, and consistent with Pearson and the First Amendment, if the agency finds the proposed claim not to satisfy a defined "significant scientific agreement" standard, the claim must nevertheless be authorized with such disclaimer or disclaimers as the agency reasonably deems necessary to avoid a potentially misleading connotation.

Respectfully submitted,

**JULIAN M. WHITAKER, M.D.;**  
**IMAGENETIX, INC.;**  
**MYCOLOGY RESEARCH LABS LTD;**  
**PURE ENCAPSULATIONS, INC.;**  
**WEIDER NUTRITION INTERNATIONAL, INC.;**  
**XCEL MEDICAL PHARMACY LTD;**  
**THE AMERICAN PREVENTIVE MEDICAL**  
**ASSOCIATION; AND**  
**DURK PEARSON AND SANDY SHAW,**

By Counsel:

A handwritten signature in black ink, appearing to read "J.W. Emord", is written over a horizontal line.

Jonathan W. Emord

Claudia A. Lewis-Eng

Eleanor A. Kolton

Andrea G. Ferrenz

**Emord & Associates, P.C.**

1050 Seventeenth St., N.W., Suite 600

Washington, D.C. 20036

Phone: (202) 466-6937

Fax: (202) 466-4638

Date: November 22, 1999

## ATTACHMENT INDEX

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**ATTACHMENT**

**1**

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Copies of the studies or the official abstracts are included as attachments to these comments. Copies of all studies relied upon herein will be submitted as a supplement.

## **ATTACHMENT 2**

**CHARLES B. SIMONE, M.MS., M.D**  
**CURRICULUM VITAE**

Name: Charles B. Simone, M.MS., M.D.

Present Address: 123 Franklin Corner Road  
Lawrenceville, NJ 08648  
609-896-2646

Date and Place of Birth: June 21, 1949 in Trenton, NJ

Marital Status: Married, two children.

Military Service: 1977-1982 Commander, U.S. Navy, Public Health Service

**E d u c a t i o n :**

1967-1971 - B.A. (Biological Sciences) - Rutgers University, New Brunswick, NJ

1971-1975 - M.MS. and M.D. - Rutgers Medical College, Piscataway, NJ

**Positions Held:**

1967-I 971 Research Assistant to Ralph J DeFalco, Professor of Immunology, Rutgers University, New Brunswick

1970-I 972 Consultant for criminal investigations requiring immunological corroborations.

1971-I 972 Acting Chairperson of Rutgers University Serological Museum.

1974-I 975 Research Appointment with Robert A. Good, Ph.D., M.D., President and Director of Memorial Sloan Kettering Cancer Hospital, New York City.

1975-1976 internship, Department of Medicine, The Cleveland Clinic Foundation, Cleveland, Ohio.

1976-I 977 First Year Assistant Resident, Department of Medicine, The Cleveland Clinic Foundation, Cleveland, Ohio.

1977-I 979 Clinical Associate, Immunology Branch, National Cancer Institute, National Institutes of Health, Bethesda, MD.

1978-I 980 Clinical Assistant Professor of Medicine, George Washington University School of Medicine, Washington, D.C.

1979-I 980 Clinical Associate, Medicine Branch, National Cancer Institute, National Institutes of Health, Bethesda, MD.

1980-I 982 Investigator, Clinical Pharmacology Oncology Branch, National Cancer Institute, National institutes of Health, Bethesda, MD.

1980- present Founder, Director, Simone Protective Cancer Institute, Lawrenceville, NJ.

1982-I 985 Radiation Therapy Department, Hospital of the University of Pennsylvania, 3400 Spruce Street, Philadelphia, PA 19104.

1984-1989 Consultant, New Jersey Education Oncology Program.

1984-I 987 Advisor, U.S. Postal Service, Preventive Health.

1984-present Speaker for the American Cancer Society.

1985-1988 Associate Professor, Radiation Therapy and Nuclear Medicine Department, Thomas Jefferson University Hospital, Philadelphia, PA.

1985-I 988 Chief, Breast Section, Radiation Therapy and Nuclear Medicine Department, Thomas Jefferson University Hospital, Philadelphia, PA.

1985-I 989 Consultant, Immunobiochemistry for BASF

1985-I 988 Chairman, Publication Review Committee, Thomas Jefferson University Hospital, Philadelphia, PA.

1986-1991 Consultant for Hoffmann-LaRoche, Nutley, NJ. "Protector Nutrient" Program.

1986-I 988 Member, Jefferson Hospital Nutrition Committee.

1986-1988 Speaker for Jefferson Educational Program

1988-1992 Medical Advisor to NJ Governor - Substance Abuse

1989-1991 Consultant to Spain

1989-pres Consultant to Cambodia

1989- pres Consultant to Russia

1990-pres Medical Advisor to National Alliance of Breast Cancer Organizations

1991-pres Consultant to Chechen

1993-pres Advisor to US Senators Tom Harkin and Orin Hatch

1993-I 995 Advisor for organization and implementation of Office of Alternative Medicine, National Institutes of Health

1993-pres Consultant to U.S. Senate, Expert Witness

1993-pres Consultant to U.S. House of Representative, Expert Witness

1994 Consultant to Senate Committee: I wrote the language that assured passage of the Dietary Supplement Health and Education Act of 1995 that ensured that all Americans have free access to food supplements.

1995 Consultant to New Jersey Medical Board, Expert Witness

1996-pres Advisor for organization and implementation of Department of Alternative Medicine,

College of Physicians and Surgeons of Columbia University, New York

1997 Judge for Mrs. America Pageant

1997 Participant in National Cancer Institute and Office of Alternative Medicine POEMS Conference

1998 Consultant to U.S. House of Representative, Expert Witness

1998 Consultant to U.S. Senate, Expert Witness

1998 Judge for Mrs. America Pageant

1998-pres Organizing new health care system for Chechen.

1998-pres Editor, Women's Health Alternative Medicine Report

Certification:

Diplomate of the National Board of Medical Examiners 1976

American Board of Internal Medicine, Eligible 1978

Medical Oncology Subspecialty Board, Eligible 1980

Allergy and Immunology Board, Eligible 1980

Radiation Oncology Subspecialty Board, Eligible 1983

Honors:

Honorable Mention Award - SAMA Research Forum April 1973

Visiting Professor in Rheumatology, Cleveland Clinic 1979

Visiting Professor in Clinical Immunology, University of Hawaii 1979

Elected into New York Academy of Sciences 1983

Elected into American College of Immunologists 1983

American Academy of Sciences 1984

Elected, Who's Who in Frontiers of Science and Technology 1984

Elected, Contemporary Authors 1984

Author Citation Award, Nineteenth Annual New Jersey Writers

Conference, NJ Institute of Technology, 1986

Visiting Professor in Immunology and Oncology, Cleveland Clinic 1987 and 1989

Invited/Special Lectures:

Lecture to Radiation Therapeutic Oncology Group 1983

Keynote Speaker - 18th Annual Congress, AACIA 1984

Keynote Speaker - Annual Cancer Symposium, University of Louisville 1985

Speaker - New Jersey State Justice Department 1985

Speaker - United States Arsenal, Picatinny, NJ 1985

Keynote Speaker - New Jersey Superintendents' and Principals'

Keynote Speaker - New York Open Center 1986

Keynote Speaker - New Jersey Superintendents' and Principals' Convention 1986

Keynote Speaker - New Jersey State Kiwanis 1985

Speaker for Jefferson Outreach Program

Keynote Speaker - New Jersey Superintendents' and Principals' Convention 1989

Please see Media Events for a More Complete Listing of all Speaking Engagements.

Societies:

New York Academy of Sciences

American College of Immunologists

American Academy of Sciences

Contemporary Authors

Military Service:

1977-1982 Commander, U.S. Public Health Service, Navy

Licensed to Practice Medicine:

New Jersey  
Pennsylvania  
Ohio  
Maryland

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2. Simone, C.B., and P.A. Henkart. 1980. Permeability changes induced in erythrocyte ghost targets by antibody-dependent cytotoxic effector cells: evidence for membrane pores. *J Immunol.* 124:954-963.
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4. Dourmaskin, R.R., P.Deteix, C.B. Simone, P.A. Henkart. 1980. Electron microscopic evidence of membrane associated pores with antibody- dependent cellular cytotoxicity. *J Immunol.* 124:1518.
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7. Simone, C.B. 1982. Directed effector cells selectively lyse human tumors. *Nature.* 297:234-236.
8. Simone, Charles B. 1983. Cancer and Nutrition, A Ten Point Plan to Reduce Your Risk of Getting Cancer. McGraw-Hill Book Company. 265 pages.
9. Kligerman, M.M., Glover, D.J., Turrisi, A.T., Norfleet, A.L., Yuhas, J.M., Coia, L.R., Simone, C.B., Glick, J.H., and Goodman, R.L. 1984. Toxicity of WR-2721 administered in single and multiple doses. *Int J Radiation Oncology Biology and Physics.* 10:1773-1 776.
10. Simone, C.B. 1985. What is your cancer risk? *Immunol. Allergy Pract.* 7( 10): 47-51.
11. Simone, C.B., and M. Mohiuddin. 1987. Radiation Therapy and Cancer: A Practical Guide for Referring Physicians. Network for Continuing Medical Education. No. 497.
12. Simone, C.B., and C.Mansfield. 1987. Perioperative Ir-192 implant at time of lumpectomy for breast cancer. *Radiology.* Nov Supplement.
13. Simone, C.B. Cancer and Nutrition. In: Therapeutic Radiology. Editor: Mansfield, CM. 1989. Elsevier Science Publishing Co. Inc.
14. Simone, C.B. 1992. Cancer and Nutrition, A Ten Point Plan to Reduce Your Risk of Getting Cancer. Revision. Avery Publishing. 338 pages.
15. Simone, Charles B. 1993. How to reduce America's runaway health care costs. Federal Register. Subcommittee of the Committee on Appropriations United States Senate, Senator Tom Harkin.

16. Simone, Charles B. 1993. Treatment of advanced cancers using shark cartilage. Federal Register. Subcommittee of the Committee on Appropriations United States Senate.
17. Simone, Charles B. 1994. Cancer and Nutrition, A Ten Point Plan to Reduce Your Risk of Getting Cancer. B. Jain Publishers, Pvt, Ltd. New Delhi, India. 338 Pages.
18. Mansfield, C.M., Komarnicky, L.T., et al. 1994. Perioperative implantation of iridium-I 92 as the boost technique for stage I and II breast cancer: results of a 1 0-year study of 655 patients. Radiology. 192(1): 33-36.
19. Simone, Charles B. 1994. The Scientific Standard Already Exists for Food Supplement Health Claims. Federal Register. I wrote the language that assured passage of the Dietary Supplement Health and Education Act (DSHEA) of 1995 that ensured that all Americans have free access to food supplements.
20. Mansfield, C.M., Komarnicky, L.T., et al. 1994. The role of radiotherapy in the treatment of breast cancer: results of perioperative implantation. Cancer Detect Prev. 18(6): 493-499.
21. Simone, Charles B. 1994. Krebs und Ernährung, Ein Sehn-Punkte Plan zur Verringerung des Krebsrisikos. Quintessenz Verlag-GmbH, Berlin, Germany 432 Pages.
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Lifestyle Modification. In: Prasad KN and Cole WC, ed. Cancer and Nutrition. 1998. Amsterdam, Netherlands, IOS Press

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41. Simone CB, Simone NL, Simone CB II. Do we always need to tell patients the truth? Lancet. 1998; 352: 1787.

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For other articles, papers, or chapters written by me for the lay audience, please refer to Print Media.